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ABSTRACT

The monograph interprets individualized education program (IEP) requirements of Part B of Public Law 94-142, the Education for All Handicapped Children Act. After introductory information outlining the purpose of the IEP and basic IEP requirements, a question and answer format of 60 questions provides specific details. Nine inserts highlight major requirements concerning the following aspects of the program: state educational responsibility; when individualized education programs must be in effect; meetings; participants in meetings; parent participation; content of IEP; private school placements; handicapped children in parochial or other private schools; and IEP accountability. Questions cover such topics as: responsibility for IEP development, out of state placements, permissible time delays before services are provided, eligibility determination, IEP annual reviews, IEP meetings, attendance of the handicapped child at an IEP meeting, use of a case manager, the role of a surrogate parent, obligations to inform parents of the right to appeal, requirement of goals and objectives in the IEP, changing short term instructional objectives, the IEP as a commitment to provide services, provision for vocational education, statement of the amount of services to be provided, possible consolidation of the IEP with an individualized service plan, provisions of confidentiality, the role of the private school representative. (DB)

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§300.340 Definition.

Individualized Education Programs

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§300.341-300.349.
(20 U.S.C. 1401(19).)

Interpretation of Requirements Under Part B of the Education of the Handicapped Act, As Amended by Pub. L. 94-142

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) The IEP meeting(s), at which parents and school personnel jointly make decisions about a handicapped child's educational program, and (2) the IEP document itself, which is a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning a handicapped child's special education needs; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a handicapped child to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each handicapped child is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document which may be used by authorized monitoring personnel from each governmental level to determine whether a handicapped child is actually receiving the free appropriate public education agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

Note.—The Act does not require that teachers or other school personnel be held accountable if a handicapped child does not achieve the goals and objectives set forth in the IEP. See §300.349, *Individualized education program—accountability*.

II. IEP Requirements

This part (1) repeats the IEP requirements in §§300.340-300.349 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

§300.341

State educational agency responsibility

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

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(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.
(20 U.S.C. 1412 (4), (6); 1413(a)(4).)

Comment: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

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1. *Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?*

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See §300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every handicapped child in the State has available a free appropriate public education (FAPE), regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

Note.—Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of handicapped children, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for the deaf or blind), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a handicapped child in a school or program operated by another State agency:

a. *SEA POLICIES OR INTERAGENCY AGREEMENTS.* The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all handicapped children in the State. This applies to each interagency situation that exists in the State, including any of the following: (1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b", below); (2) when a State or local agency other than the SEA or LEA places a child in a residential faciliy or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

Note.—This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and for non-educational purposes.

Frequently, more than one agency is involved in developing or implementing a handicapped child's IEP (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of a free appropriate public education to a handicapped child. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

Note.—The SEA must also ensure that any agency involved in the education of a handicapped child is in compliance with the "least restrictive environment" provisions of the Act and regulations, and, specifically, with the requirement that each handicapped child's placement (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (§300.552(a), *Placements.*)

b. *LEA-INITIATED PLACEMENTS.* When an LEA is responsible for the education of a handicapped child, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

Note.—The IEP must be developed before the child is placed. (See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 59, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or re-

mains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. *For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?*

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has available a free appropriate public education.

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§ 300.342

When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(20 U.S.C. 1412 (2) (B), (4), (6); 1414(a) (5); Pub. L. 94-142, Sec. 8(c) (1975).)

Comment. Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under § 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

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3. *In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?*

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, where appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. *How much of a delay is permissable between the time a handicapped child's IEP is finalized and when special education is provided?*

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediatley after the IEP is finalized. The comment following Section 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances which require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

Note.—§300.346(d) requires that the IEP include the "projected dates for initiation of services."

5. *For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?*

An IEP must "be in effect *before* special education and related services are provided to a child." (§ 300.342(b)(1), emphasis added.) The appropriate placement for a given handicapped child cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible handicapped child in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an "interim" IEP for the child, which sets out the specific conditions and timeliness for the trial placement. (See paragraph "c", below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

Note.—Once a handicapped child's IEP is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives *based* on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 37-43, below, regarding IEP goals and objectives.)

6. *If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?*

It would not be necessary for the new LEA to conduct an IEP meeting if: (1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

Note.—The child must be placed in a special education program immediately after the IEP is finalized. See Question 4, above.

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

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§300.343

Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977-1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412 (2) (B), (4), (6); 1414(a) (5).)

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in §300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in §300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

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7. *What is the purpose of the 30 day timeline in Section 300.343(c)?*

The 30 day timeline in §300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child is handicapped, the public agency has *up to* 30 days to hold an IEP meeting.

Note.—See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. *Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?*

Paragraph (e) of §300.532 *(Evaluation procedures)* provides that the evaluation of each handicapped child must be "made by a multidisciplinary team or group of persons * * *". The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting, are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

Note.—When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See §300.345 for requirements on parent participation.)

Note.—If, at a separate eligibility meeting, a decision is made that a child is *not* eligible for special education, the parents should be notified about the decision.

9. *Must IEPs be reviewed or revised at the beginning of each school year?*

No. The basic requirement in the regulations is that IEPs must *be in effect* at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise each handicapped child's IEP. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. *How frequently must IEP meetings be held and how long should they be?*

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need (121 Cong. Rec. S20428–29) (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. *Who can initiate IEP meetings?*

IEP meetings are initiated and conducted at the discretion of the public agency. However, if the parents of a handicapped child believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

Note.—Under §300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. *May IEP meetings be tape-recorded?*

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an "educational record", within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and EHA-B (34 CFR 300.560–.565).

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§300.344

Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to §300.345.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412 (2) (B), (4), (6); 1414(a) (5).)

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special

education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

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13. *Who can serve as the "representative of the public agency" at an IEP meeting?*

The "representative of the public agency" could be any member of the school staff, other than the child's teacher, who is "qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children." (Section 602(19) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a handicapped child who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

Note.—IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. *Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?*

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following: (1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

Note.—In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

15. *For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?*

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

Note.—Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. *If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?*

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher

of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, where necessary, to consult with and be a resource to the child's regular teacher.

17. *If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?*

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

Note.—In an informal examination of IEPs from five States, Department staff found that, on the average, IEP meetings were attended by four persons.

b. While large meetings are generally inappropriate, there may be specific circumstances in which the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. *If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?*

No. A speech-language pathologist would usually serve as the child's "teacher" for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. *If a child is enrolled in a special education class because of a primary handicap, and also receives speech-language pathology services, must both specialists attend the IEP meeting?*

No. It is not required that both attend. The special education teacher would attend the meeting as the child's "teacher". The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. *When may representatives of teacher organizations attend IEP meetings?*

Under the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g) and implementing regulations (34 CFR Part 99), officials of teacher organizations may not attend IEP meetings at which personally identifiable information from the student's education records may be discussed—except with the prior written consent of the parents. (See 34 CFR 99.30(a)(1).)

In addition, EHA-B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. *When may a handicapped child attend an IEP meeting?*

Generally, a handicapped child should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting —as part of the "notice of meeting" required under § 300.345(b) —that they may invite their child to participate.

Note.—The parents and agency should encourage older handicapped children (particular those at the secondary school level) to participate in their IEP meetings.

22. *Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?*

The Act is silent concerning any modification of the rights of a handicapped student's parents when the student reaches the age of majority. The Department is considering providing further guidance on this issue in a separate document.

23. *Must related services personnel attend IEP meetings?*

No. It is not required that they attend. However, if a handicapped child has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

Note.—This written recommendation could be a part of the evaluation report.

24. *Are agencies required to use a case manager in the development of a handicapped child's IEP?*

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all handicapped children served by the agency. Examples of the kinds of activities which case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. *For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?*

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary handicap is a speech impairment, there may be no other evaluation personnel involved. The comment following § 300.532 *(Evaluation procedures)* states:

Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

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§300.345

Parent Participation

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a) (1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) the public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program. *(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)*

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

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26. *What is the role of the parents at an IEP meeting?*

The parents of a handicapped child are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services and (2) join with the other participants in deciding what services the agency will provide to the child.

Note.—In some instances, parents might elect to bring another participant to the meeting, (e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. *What is the role of a surrogate parent at an IEP meeting?*

A surrogate parent is a person appointed to represent the interests of a handicapped child in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under EHA-B. Thus, the surrogate par-

ent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. *(See § 399.514, Surrogate parents.)*

28. Must the public agency let the parents know who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (§ 300.345(b), emphasis added.) Where possible, the agency should give the name and position of each person who will attend. In additon, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. *Are parents required to sign IEPs?*

Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

Note.—A national survey conducted under contract with the Department indicates that, in practice, most IEPs are signed by parents.

The following are some of the ways in which IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

Note.—This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

Note.—If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

Note.—Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. *If the parent signs the IEP, does the signature indicate consent for initial placement?*

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child § 300.504(b)(1)(ii) only if the IEP includes a statement on initial placement which meets the definition of "consent" in § 300.500:

"Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought * * *

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary * * * and may be revoked at any time.

31. *Do parents have the right to a copy of their child's IEP?*

Yes. Section 300.345(f) states that "the public agency shall give the parent, on request, a copy of the individualized education program." In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself a reasonable time following the meeting.

Note.—The National Committee for Citizens in Education reports that in a 1979 survey of approximately 2,500 parents of handicapped children in 46 States, nearly 60% indicated that a completed copy of the IEP had been made available for them to keep.

32. *Must parents be informed at the IEP meeting of their right to appeal?*

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§ 300.504–300.505), it would not be necessary for the agency to do so again at the IEP meeting.

- Section 300.504(a) of the regulations states that "written notice which meets the requirements under § 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child."
- Section 300.505(a) states that the notice must include "(1) A full explanation of all procedural safeguards available to parents" under the due process provisions of the regulations (§§ 300.500–300.589).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences through the due process procedures under the Act.

Note.—Section 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in § 300.504(a)(1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See

§ 300.506. *Impartial due process hearing.)*

33. *Does the IEP include ways for parents to check the progress of their children?*

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding a handicapped child's special education program. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37-43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. *Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?*

No. A handicapped child's IEP is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school personnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following: (1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP §300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. *If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?*

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies when there are disagreements.

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas in which there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps: (1) Remind the parents that they may resolve their differences through the due process procedures under EHA-B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) which both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See §300.513, *Child's status during proceedings.*) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the

child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary agreement.

(2) A handicapped child is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

Note.—If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service *would* continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

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§300.346

Content of individualized education program.

The individiualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5); Senate Report No. 94-168, p. 11 (1975).)

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36. What should be included in the statement of the child's present levels of educational performance?

The statement of present levels of educational performance will be different for each handicapped child. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points which should be taken into account in writing this part of the IEP.

a. The statement should accurately describe the effect of the child's handicap on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

Note.—Labels such as "mentally regarded" or "deaf" may not be used as a substitute for the description of present levels of educational performance.)

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, where appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the handicap on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. Why are goals and objectives required in the IEP?

The statutory requirements for including annual goals and short term objectives (Section 602(19)(B)), and for having at least an annual review of a handicapped child's IEP (Section 614(a)(5)), provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. What are "annual goals" in an IEP?

The annual goals in the IEP are statements which describe what a handicapped child can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. What are "short term instructional objectives" in an IEP?

"Short term instructional objectives" (also called "IEP objectives") are measurable, intermediate steps between a handicapped child's present levels of educational performance and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent to which the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. *Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?*

IEP goals and objectives are concerned primarily with meeting a handicapped child's need for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's handicap which interfere with learning and educational performance in school. For example, if a learning disabled child is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a severely retarded child would be more comprehensive and cover more of the child's school program than if the child has only a mild handicap.

41. *Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?*

Yes. There should be a direct relationship between the IEP goals and objectives for a given handicapped child and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

Note.—See Question 56, below, regarding the length of IEPs.

42. *When must IEP objectives be written—before placement or after placement?*

IEP objectives must be written before placement. Once a handicapped child is placed in a special education program, the teacher might develop lesson plans or more detailed objectives *based* on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. *Can short term instructional objectives be changed without initiating another IEP meeting?*

No. Section 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* a handicapped child's individualized education program" (emphasis added). Since a change in short term instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see §300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see §300.345(c)).

44. *Must the IEP include all special education and related services needed by the child or only those available from the public agency?*

Each public agency must provide a free appropriate public education to all handicapped children under its jurisdiction. Therefore, the IEP for a handicapped child must include all of the specific education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. *Is the IEP a commitment to provide services—i.e., must a public*

agency provide all of the services listed in the IEP?

Yes. Each handicapped child's IEP must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. *Must the public agency itself directly provide the services set out in the IEP?*

The public agency responsible for the education of a handicapped child could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see §300.301(a)). However, the services must be at no cost to the parents, and responsibility for ensuring that the IEP services are provided remains with the public agency.

47. *Does the IEP include only special education and related services or does it describe the total education of the child?*

The IEP is required to include only those matters concerning the provision of special education and related services and the extent to which the child can participate in regular education programs.

Note.—The regulations define "special education" as specially designed instruction to meet the unique needs of a handicapped child, and "related services" as those which are necessary to assist the child to benefit from special education.) (See §§300.14 and 300.13, respectively.)

For some handicapped children, the IEP will only address a very limited part of their education (e.g., for a speech impaired child, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those who are profoundly retarded), the IEP might cover their total education. An IEP for a physically impaired child with no mental impairment might consist only of specially designed physical education. However, if the child also has a mental impairment, the IEP might cover most of the child's education.

Note.—The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. *If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?*

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a hearing impaired child, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. *When must physical education (PE) be described or referred to in the IEP?*

Section 300.307(a) provides that "physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education." The following paragraphs (1) set out some of the different PE program arrangements for handicapped students, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP;

a. *Regular PE with non-handicapped students.* If a handicapped student can participate fully in the regular PE program without any special modifications to compensate for the student's handicap, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. *Specially designed PE.* If a handicapped student needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. *PE in separate facilities.* If a handicapped student is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for the deaf), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b", above.)

Note.—The Department is considering the possibility of publishing a separate document on the PE requirement under the Act and regulations.

50. *If a handicapped student is to receive vocational education, must it be described or referred to in the student's IEP?*

The answer depends on the kind of vocational education program to be provided. If a handicapped student is able to participate in the regular vocational education program without any modifications to compensate for

the student's handicap, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

Note:—Regulations under the Vocational Education Act provide that (1) certain funds available under that Act for vocational programs for handicapped persons must be used in a manner consistent with the State's plan under EHA-B, and (2) the five-year State Vocational Education Plan "shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized education program as required by the Education of the Handicapped Act." See 34 CFR 400.141(f)(10), 400.182(f) (formerly 45 CFR 104.141(f)(10), 104.182(f)).

51. *Must the IEP specify the amount of services or may it simply list the services to be provided?*

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

Note.—The parents should be notified whenever this occurs.

52. *Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?*

Yes. Section 300.346(c) provides that the IEP for each handicapped child must include a "statement of * * * the extent to which the child will be able to participate in regular educational programs." One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with non-handicapped students. Another way is to list the specific regular education classes the child will be attending.

Note.—If a severely handicapped child, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with non-handicapped students (e.g., lunch, assembly periods, club activities, and other special events).

53. *Can the anticipated duration of services be for more than twelve months?*

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. *Must the evaluation procedures and schedules be included as a separate item in the IEP?*

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term objectives.

Note.—In many instances, these components are incorporated directly into the objectives.

Other Questions About the Content of an IEP.

55. *Is it permissible for an agency to have the IEP completed when the IEP meeting begins?*

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(9) of the Act defines the IEP as a written statement *developed in any meeting* with the agency representative, the teacher, the parent, and, whenever appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94-142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their handicapped children. (See, e.g., S. Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47-50 (1975).)

56. *Is there a prescribed format or length for an IEP?*

No. The format and length of an IEP are matters left to the dis-

cretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

Note.—In a national survey conducted under contract with the Department, it was found that 47% of the IEPs reviewed were 3 pages or less in length.

57. *Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?*

Yes. In instances where a handicapped child must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document: *Provided,* That (1) it contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans which might be consolidated with the IEP are: (1) The Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. *What provisions on confidentiality of information apply to IEPs?*

IEPs are subject to the confidentiality provisions of both (1) EHA-B (Section 617(c) of the Act; §§300.560-300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. 1232g). An IEP is an "education record" as that term is used in the FERPA and implementing regulations (34 CFR Part 99) and is, therefore, subject to the same protections as other education records relating to the student.

Note.—Under Section 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests * * * " in that information.

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§300.347

Private school placements.

(a) *Developing individualized education program.* (1) Before a public agency places a handicapped child in, or refers a child to a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with §300.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Receiving and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a) (4) (B).)

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§300.348

Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with §300.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a) (4) (A).)

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59. *If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?*

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

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§300.349

Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H 7152 (daily ed., July 21, 1975).)

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

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60. *Is the IEP a performance contract?*

No. Section 300.349 makes it clear that the IEP is *not* a performance contract that imposes liability on a teacher or public agency if a handicapped child does not meet the IEP objectives. While the agency must provide special education and related services in accordance with each handicapped child's IEP, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

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